

**STATE OF KANSAS
DEPARTMENT OF ADMINISTRATION**

Notice of Public Hearing on Proposed Administrative Regulations

A public hearing will be conducted on Friday, January 7, 2011, at 9:00 a.m. in Room 106 of the Landon State Office Building, 900 S.W. Jackson, Topeka, Kansas 66612, to consider the adoption of proposed rules and regulations of the Department of Administration on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Department of Administration, Office of Chief Counsel, 900 S.W. Jackson, Room 107, Topeka, Kansas 66612, or by e-mail to Lane.Hemsley@da.ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodations to participate in the hearing should be made at least five working days in advance of the hearing by contacting Lane Hemsley at (785) 291-3013 or Lane.Hemsley@da.ks.gov. The north entrance of the Landon State Office Building is accessible. Handicapped parking is located at the north end of the Landon State Office Building, across the street from the north entrance to the building, and on Ninth Street, just around the corner from the north entrance to the building.

Copies of the proposed regulations and their respective economic impact statements may be viewed at the following website: <http://www.da.ks.gov/fm/>. A summary of the proposed regulations follows:

K.A.R. 1-65-1. Purchase of energy star products and equipment. This regulation requires state agencies to acquire products and equipment that bear the Energy Star® label if the projected cost savings for the useful life of the Energy Star® products and equipment is equal to or greater than the additional cost compared to functionally equivalent products and equipment of lower efficiency. This regulation will have minimal economic impact in that some additional time will be required to perform the tasks associated with identifying the projected cost savings for acquiring Energy Star® products and equipment.

K.A.R. 1-66-1. Definitions. This regulation identifies the definitions applicable to K.A.R. 1-66-2 and K.A.R. 1-66-3, which relate to energy audits for real property of state-owned and non-state-owned buildings. The regulation section should have no economic impact.

K.A.R. 1-66-2. Energy audit required for each state-owned building. This regulation details the time frame that a state agency head, or that person's designee, has to conduct an energy audit of each building located on real property owned by a state agency. The purpose of the energy audit is to determine which state-owned buildings are using an excessive amount of energy. There will be some additional time and material costs associated with the conduct of an energy audit on each state-owned building.

K.A.R. 1-66-3. Energy audit required for new lease, or lease renewal or extension, of non-state-owned real property. This regulation details the conditions under which a new lease, or lease renewal or extension, of non-state-owned real property may be approved by the secretary of administration after an energy audit is conducted. There will be some additional

costs for the energy audit and, where applicable, energy conservation measures that a property owner or lessor may attempt to pass on to a governmental agency subject to the new lease, or lease renewal or extension. Some of these additional costs may be recouped over an extended period of time in the form of energy savings during the lifespan of the new lease, or lease renewal or extension.

K.A.R. 1-67-1. Definitions. This regulation identifies the definitions applicable to K.A.R. 1-67-2 and K.A.R. 1-67-3, which relate to energy efficiency performance standards for state-owned buildings. The regulation should have no economic impact.

K.A.R. 1-67-2. Energy efficiency performance standards for new construction. This regulation requires an agency architect, agency engineer, project architect, or project engineer to comply with ASHRAE or IECC at the time of submission of the design development for new construction. If a functionally equivalent standard other than ASHRAE or IECC is applied, then a report verifying life-cycle cost-effective compliance must be submitted. There should be no economic impact because the Department of Administration currently requires compliance with ASHRAE or IECC, as appropriate.

K.A.R. 1-67-3. Energy efficiency performance standards for renovated, retrofitted, or repaired buildings. This regulation requires an agency architect, agency engineer, project architect, or project engineer to comply with ASHRAE or IECC at the time of submission of the design development for the renovation, retrofit, or repair of each state-owned building. If a functionally equivalent standard other than ASHRAE or IECC is applied, then a report verifying life-cycle cost-effective compliance must be submitted. There should be no economic impact because the Department of Administration currently requires compliance with ASHRAE or IECC, as appropriate.

K.A.R. 1-68-1. Definitions. This regulation identifies the definitions applicable to K.A.R. 1-68-2, which relates to the purchase of a new motor vehicle during fiscal year 2011. The regulation should have no economic impact.

K.A.R. 1-68-2. Purchase of a new motor vehicle during fiscal year 2011. This regulation requires that new motor vehicles be purchased in compliance with competitive bidding statutes and life-cycle cost-effective. The regulation should result in additional fuel savings for state-owned motor vehicles.

Article 65.—Energy Star Products and Equipment

1-65-1. Purchase of energy star products and equipment. (a) Subject to the provisions of K.S.A. 75-3737a through K.S.A. 75-3744, K.S.A. 75-37,102, and K.S.A. 75-4713 and amendments thereto, each state agency shall acquire products and equipment that bear the energy star label pursuant to K.S.A. 75-37,127, and amendments thereto.

(b) In order to determine the projected cost savings for the useful life of an energy star product, each state agency shall utilize the United States environmental protection agency's energy savings calculator for the energy star product.

(c) If the United States environmental protection agency has not produced an energy savings calculator for a specific energy star product, then the projected cost savings for the useful life of the energy star product shall be based on a comparison of the following:

(1) The initial cost of the energy star product plus the estimated lifetime operating cost of the energy star product; and

(2) the initial cost of a functionally equivalent product plus the estimated lifetime operating cost of the functionally equivalent product.

(d) This regulation shall apply only to the purchase of new, unused energy star products and equipment. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,127; effective P-

_____.)

ATTORNEY GENERAL

FEB 25 2010

APPROVED BY

DEPT. OF ADMINISTRATION

FEB 17 2010

APPROVED

**STATE OF KANSAS
DEPARTMENT OF ADMINISTRATION
ECONOMIC IMPACT STATEMENT FOR K.A.R. 1-65-1**

Pursuant to K.S.A. 77-416(b), the economic impact statement for K.A.R. 1-65-1 immediately follows:

1. **A brief description of the proposed rule and regulation and what is intended to be accomplished by its adoption. K.S.A. 77-416(b)(1)(A).**

As required by K.S.A. 2009 Supp. 75-37,127, K.A.R. 1-65-1 is a newly proposed regulation. It requires state agencies to acquire products and equipment that bear the Energy Star® label if the projected cost savings for the useful life of the Energy Star® products and equipment is equal to or greater than the additional cost compared to functionally equivalent products and equipment of lower efficiency. The regulation provides two alternative methods to determine the projected cost savings for the useful life of an energy star product.

First, a state agency must attempt to utilize the United States environmental protection agency's energy savings calculator for the energy star product. The energy savings calculators are found at: http://www.energystar.gov/index.cfm?c=bulk_purchasing.bus_purchasing. If an energy savings calculator is not available, then the projected cost savings for the useful life of the Energy Star® product is based on a comparison of the initial cost of the energy star product plus the estimated lifetime operating cost of the Energy Star® product and the initial cost of a functionally equivalent product plus the estimated lifetime operating cost of the functionally equivalent product. In either event, the regulation applies only to the purchase of new, unused Energy Star® products and equipment.

2. **Whether the proposed rule and regulation is mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and whether the proposed rule and regulation exceeds the requirements of applicable federal law. K.S.A. 77-416(b)(1)(B).**

This regulation is not mandated by federal law. The regulation does not exceed the requirements of federal law.

3. A description of the cost, the persons who will bear the costs and those who will be affected by the proposed rule and regulation, including the agency proposing the rule and regulation, other governmental agencies or units, private citizens and consumers of the products or services which are the subject of the rule and regulation or the enforcement thereof. K.S.A. 77-416(b)(1)(C).

The Department of Administration anticipates minimal economic impact on the Department of Administration, other governmental agencies or units, or private citizens and consumers of the products or services which are the subject of the rule and regulation. It will take a minimal amount of time to utilize an energy savings calculator pursuant to K.A.R. 1-65-1(b). It will also take a minimal amount of time to compute and compare products under K.A.R. 1-65-1(c).

Otherwise, the practice of purchasing Energy Star[®] products and equipment through the Department of Administration, Division of Purchases, has been ongoing since the issuance of Executive Directive No. 07-373 (Energy Conservation and Management). Paragraph 6 of the executive directive required the Department of Administration to "review its purchasing practices to assure 100% compliance with existing requirements related to energy conservation and to develop or increase standards for such products as appliances, light bulbs, and computers using Energy Star[®] as a minimum standard." As a result, the Department of Administration, Division of Purchases, implemented an environmentally preferable products (EPP) procurement program. The EPP procurement program is intended to ensure that Energy Star[®] products are the preferred products that state agencies should acquire through the competitive bidding statutes, K.S.A. 75-3739 *et seq.*

4. A description of any less costly or less intrusive methods that were considered by the state agency for achieving the stated purpose of the rule and regulation and why such methods were rejected in favor of the proposed rule and regulation. K.S.A. 77-416(b)(1)(D).

In light of Executive Directive No. 07-373 and the implementing statute for this regulation, K.S.A. 75-37,127, no other methods were considered for achieving the stated purpose of the rule and regulation.

Article 66.—Energy Audits for Real Property

1-66-1. Definitions. For purposes of this article, each of the following terms shall have the meaning specified in this regulation:

(a) "Agency head" means an individual or body of individuals in which the ultimate legal authority of a state agency is vested by any provision of law.

(b) "Division" means the division of facilities management within the Kansas department of administration.

(c) "Energy audit" means the utilization of a building energy-use benchmarking system, including the energy star portfolio manager, that generates a written report that details the conversion of a building's energy consumption data into energy-intensity metrics for the purpose of comparing the energy use of a building to the national average energy use of similar buildings.

(d) "Energy consumption data" means the monthly amount of energy consumed in the preceding 12-month period as recorded by a utility distributing and selling energy or water services for a particular building.

(e) "Energy-intensity metrics" means the measurement of weather variations and changes in the physical and operating characteristics of each building.

(f) "Energy star portfolio manager" means an online energy management tool created by the United States environmental protection agency that uses an algorithmic formula for tracking and assessing energy and water consumption across a portfolio of buildings. The energy star portfolio manager can be accessed through the division's web site.

(g)(1) "Excessive amount of energy," when applied to a building subject to an energy audit, shall be determined by comparing the building's site and source energy-intensity metrics,

ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

OCT 13 2010

OCT 11 2010

APPROVED BY



APPROVED

annualized to a 12-month period, to the national average site and source energy-intensity metrics of similar buildings.

(2) If the site and source energy-intensity metrics of the building subject to an energy audit are greater than the national average site and source energy-intensity metrics, then the building shall be deemed to use an excessive amount of energy.

(h) "Secretary" means the secretary of the Kansas department of administration.

(i) "State agency" has the meaning specified in K.S.A. 75-3701, and amendments thereto.

(Authorized by and implementing K.S.A. 2009 Supp. 75-37,128; effective P-

_____.)

ATTORNEY GENERAL

OCT 13 2010

APPROVED BY



DEPT. OF ADMINISTRATION

OCT 11 2010

APPROVED

1-66-2. Energy audit required for each state-owned building. (a) If a state agency owns real property, the agency head, or that person's designee, shall conduct an energy audit of each building on that real property and submit the written report to the division.

(b) An energy audit shall be conducted every five years for each building specified in subsection (a).

(c) If a state agency owns four buildings or less, the written reports for the first energy audits for all of the buildings shall be submitted no later than July 1, 2011.

(d) If a state agency owns five or more buildings, an energy audit for at least one-fifth of all of those buildings shall be conducted each year. The written reports for the first energy audits shall be submitted no later than July 1, 2011.

(e) Each state agency conducting an energy audit shall identify each state-owned building in which an excessive amount of energy is being used, pursuant to K.S.A. 75-37,128 and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,128; effective P. _____.)

ATTORNEY GENERAL

OCT 18 2010

APPROVED BY 

DEPT. OF ADMINISTRATION

OCT 11 2010

APPROVED

1-66-3. Energy audit required for new lease, or lease renewal or extension, of non-state-owned real property. (a) Each new lease, or lease renewal or extension, for non-state-owned real property submitted by an agency head to the division for approval shall include the written report for an energy audit conducted by the owner or lessor of each building on that real property that is the subject of the new lease, or lease renewal or extension.

(b) Subject to the provisions of K.S.A. 75-3739 and amendments thereto, a new lease, or lease renewal or extension, may be approved if either of the following conditions is met:

(1) The written report for the energy audit indicates that the leased space does not use an excessive amount of energy.

(2) The written report for the energy audit indicates that the leased space uses an excessive amount of energy, and the new lease, or lease renewal or extension, requires the owner or lessor to implement cost-effective energy conservation measures that are approved by the secretary to reduce or eliminate the excessive amount of energy. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,128; effective P-_____.)

ATTORNEY GENERAL

OCT 18 2010

APPROVED BY 

DEPT. OF ADMINISTRATION

OCT 11 2010

APPROVED

**STATE OF KANSAS
DEPARTMENT OF ADMINISTRATION
ECONOMIC IMPACT STATEMENT FOR K.A.R. 1-66-1 TO K.A.R. 1-66-3**

Pursuant to K.S.A. 77-416(b), the economic impact statement for K.A.R. 1-66-1 to K.A.R. 1-66-3 immediately follows:

1. **A brief description of the proposed rules and regulations and what is intended to be accomplished by their adoption. K.S.A. 77-416(b)(1)(A).**

As required by K.S.A. 2009 Supp. 75-37,128, K.A.R. 1-66-1, K.A.R. 1-66-2, and K.A.R. 1-66-3 constitute a newly proposed set of regulations. This set of regulations requires that energy audits be conducted on both state-owned and non-state-owned real property. Each shall briefly be addressed in turn.

For state-owned real property, the regulations require state agencies to perform an energy audit on each state-owned building for the purpose of identifying state-owned buildings in which an excessive amount of energy is being used. For non-state-owned real property, the regulations require an energy audit to be performed prior to a state agency's execution of a new lease, or lease renewal or extension, of non-state-owned real property. Like an energy audit for state-owned real property, an energy audit conducted for non-state-owned real property is intended to identify and, where applicable, reduce or eliminate the state's consumption of an excessive amount of energy.

2. **Whether the proposed rules and regulations are mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and whether the proposed rules and regulations exceed the requirements of applicable federal law. K.S.A. 77-416(b)(1)(B).**

The regulations are not mandated by federal law. The regulations do not exceed the requirements of federal law.

3. A description of the cost, the persons who will bear the costs and those who will be affected by the proposed rules and regulations, including the agency proposing the rules and regulations, other governmental agencies or units, private citizens and consumers of the products or services which are the subject of the rules and regulations or the enforcement thereof. K.S.A. 77-416(b)(1)(C).

The Department of Administration anticipates some initial, but minimal, economic loss for the Department of Administration, other governmental agencies or units, or private citizens and consumers of the products or services which are the subject of the rules and regulations. Due to unique physical and operating characteristics of each state-owned and non-state-owned building subject to an energy audit, however, the Department of Administration is unable to identify a precise description of the initial economic loss for energy audits on both state-owned and non-state-owned buildings.

For state-owned buildings, it is anticipated that the Department of Administration and other governmental agencies will incur, but subsequently absorb within current budget limitations, the additional time and material costs associated with the conduct of an energy audit on each state-owned building. In order to realize cost-savings after an energy audit is conducted on a state-owned building, the Department of Administration attempted to require that each agency that owns a building using an excessive amount of energy include a plan for improving the building's energy efficiency within the state agency's five-year capital improvement plan, as specified in K.S.A. 75-3717b. This attempt, unfortunately, was found to exceed the scope of statutory authority. Consequently, the possibility of future cost-savings on state-owned buildings rests primarily in the hands of the Kansas Legislature, which will receive an annual report on state-owned real property locations in which an excessive amount of energy is being used.

With respect to non-state-owned buildings, it is anticipated that the energy audits will result in some additional costs to governmental agencies seeking a new lease, or lease renewal or

extension, with a real property owner or lessor. In these instances, the real property owner or lessor will likely seek to pass the additional costs of both the energy audit and, where applicable, energy conservation measures to the governmental agency subject to the new lease, or lease renewal or extension, in the form of increased rent payments. It is further anticipated that some of these additional costs will be recouped over an extended period of time in the form of energy savings during the lifespan of the new lease, or lease renewal or extension.

With these cost and cost-shifting factors in mind, the Department of Administration has attempted to streamline the energy audit process in order to assist with the reduction of energy audit costs. In particular, the Department of Administration explored various cost-reduction measures, including the possibility of attempting to limit energy audits to buildings in excess of 5,000 square feet, the utilization of in-house architects or engineers who are already on the state payroll, or a real property owner's or lessor's retention of architects and professional engineers, who would charge fees ranging from several hundred to several thousand dollars to perform a single energy audit. All of these measures were rejected as either beyond the scope of K.S.A. 2009 Supp. 75-37,128 or cost-prohibitive. For example, it is cost-prohibitive to send an in-house or retained professional engineer to audit a small bathhouse with a single light switch on property in Western Kansas operated by the Kansas Department of Wildlife and Parks.

Consequently, the Department of Administration determined that utilization of the Energy Star Portfolio Manager[®], or another similar energy management tool, was the most appropriate and cost-efficient manner in which to perform energy audits. The Energy Star Portfolio Manager[®] is a free online energy management tool created by the United States Environmental Protection Agency that uses an algorithmic formula for tracking and assessing energy and water consumption across a portfolio of buildings. The Energy Star Portfolio

Manager[®], and other similar tools, generally rely on data obtained from the Commercial Building Energy Consumption Survey (CBECS), which is conducted by the United States Department of Energy every four years to identify changing trends in building characteristics, energy cost information, and energy use.

While the Energy Star Portfolio Manager[®] is the preferred tool that is currently in use within the Department of Administration, the regulations also allow for other similar tools to be used because this option will provide greater flexibility and cost-effective savings to those who may already be using other energy audit tools. In short, the Energy Star Portfolio Manager[®] is intended to be used by any state agency, property owner, or lessor seeking energy savings and can be utilized by following the step-by-step guide on the free online tutorial.

4. **A description of any less costly or less intrusive methods that were considered by the state agency for achieving the stated purpose of the rules and regulations and why such methods were rejected in favor of the proposed rules and regulations. K.S.A. 77-416(b)(1)(D).**

As noted above, the Department of Administration explored various cost-reduction measures, including the possibility of attempting to limit energy audits to buildings in excess of 5,000 square feet, the utilization of in-house architects or engineers who are already on the state payroll, or a real property owner's or lessor's retention of architects and professional engineers who would charge fees ranging from several hundred to several thousand dollars to perform a single energy audit. All of these measures were rejected as either beyond the scope of K.S.A. 2009 Supp. 75-37,128 or cost-prohibitive.

The Department of Administration prepared twenty-four different drafts of these regulations and spent well over a year exploring various regulatory designs. Accordingly, the Energy Star Portfolio Manager[®] or other similar tools were determined to be the least costly and intrusive method for achieving the stated purpose of the rules and regulations.

Article 67.—Energy Efficiency Performance Standards for State-Owned Buildings

1-67-1. Definitions. For purposes of this article, each of the following terms shall have the meaning specified in this regulation:

(a) "Agency architect" has the meaning specified in K.S.A. 75-1254(a)(3), and amendments thereto.

(b) "Agency engineer" has the meaning specified in K.S.A. 75-1254(a)(3), and amendments thereto.

(c) "ASHRAE" has the meaning specified in K.S.A. 75-37,126, and amendments thereto.

(d) "Design development" means drawings and other documents that describe the size and character of a project's architectural, structural, mechanical, and electrical systems.

(e) "IECC" has the meaning specified in K.S.A. 75-37,126, and amendments thereto.

(f) "New construction" has the meaning specified in K.S.A. 75-37,126, and amendments thereto.

(g) "Project architect" has the meaning specified in K.S.A. 75-1251, and amendments thereto.

(h) "Project engineer" has the meaning specified in K.S.A. 75-1251, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,129a; effective P-

_____.)

ATTORNEY GENERAL

JUL 01 2010

APPROVED BY

ga

DEPT. OF ADMINISTRATION

JUN 24 2010

APPROVED

1-67-2. Energy efficiency performance standards for new construction. (a) Subject to the provisions of K.S.A. 75-1250 through K.S.A. 75-1267 and K.S.A. 75-3784 and amendments thereto, each agency architect, agency engineer, project architect, or project engineer shall comply with ASHRAE or IECC at the time of submission of the design development for new construction.


(b) If an agency architect, agency engineer, project architect, or project engineer seeks to comply with a functionally equivalent standard other than ASHRAE or IECC at the time of submission of the design development for new construction, the agency architect, agency engineer, project architect, or project engineer shall submit a report verifying life-cycle cost-effective compliance for the new construction. The report shall be submitted to the department of administration, division of facilities management. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,129a; effective P-_____.)

ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

JUL 01 2010

JUN 24 2010

APPROVED BY 

APPROVED

1-67-3. Energy efficiency performance standards for renovated, retrofitted, or repaired buildings. (a) Subject to the provisions of K.S.A. 75-1250 through K.S.A. 75-1267 and K.S.A. 75-3784 and amendments thereto, each agency architect, agency engineer, project architect, or project engineer shall, to the extent possible, comply with ASHRAE or IECC at the time of submission of the design development for the renovation, retrofit, or repair of each state-owned building.

(b) If an agency architect, agency engineer, project architect, or project engineer seeks to comply with a functionally equivalent standard other than ASHRAE or IECC at the time of submission of the design development for the renovation, retrofit, or repair of each state-owned building, the agency architect, agency engineer, project architect, or project engineer shall submit a report verifying life-cycle cost-effective compliance for the renovation, retrofit, or repair of each state-owned building. The report shall be submitted to the department of administration, division of facilities management. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,129a; effective P-_____.)

ATTORNEY GENERAL

JUL 07 2010

APPROVED BY

DEPT. OF ADMINISTRATION

JUL 08 2010

APPROVED

**STATE OF KANSAS
DEPARTMENT OF ADMINISTRATION
ECONOMIC IMPACT STATEMENT FOR K.A.R. 1-67-1 TO K.A.R. 1-67-3**

Pursuant to K.S.A. 77-416(b), the economic impact statement for K.A.R. 1-67-1 to K.A.R. 1-67-3 immediately follows:

1. **A brief description of the proposed rules and regulations and what is intended to be accomplished by their adoption. K.S.A. 77-416(b)(1)(A).**

As required by K.S.A. 2009 Supp. 75-37,129a, K.A.R. 1-67-1, K.A.R. 1-67-2, and K.A.R. 1-67-3 constitute a newly proposed set of regulations. This set of regulations requires an agency architect, agency engineer, project architect, or project engineer to comply with ASHRAE or IECC at the time of submission of the design development for new construction (K.A.R. 1-67-2(a)) and the renovation, retrofit, or repair of each state-owned building (K.A.R. 1-67-3(a)). Under K.S.A. 2009 Supp. 75-37,126(a), ASHRAE is the American society of heating, refrigerating, and air-conditioning engineers, inc., standard 90.1-2007. IECC, as defined by K.S.A. 2009 Supp. 75-37,126(c), means the 2006 international energy conservation code.

While ASHRAE and IECC are the designated energy efficiency performance standards, the regulations also provide for functionally equivalent standards to be used in the submission of the design development for new construction (K.A.R. 1-67-2(b)) and the renovation, retrofit, or repair of each state-owned building (K.A.R. 1-67-3(b)). In these cases, the agency architect, agency engineer, project architect, or project engineer is required to use that person's professional expertise to submit a report verifying life-cycle cost-effective compliance to the Department of Administration, Division of Facilities Management.

2. **Whether the proposed rules and regulations are mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and whether the proposed rules and regulations exceed the requirements of applicable federal law. K.S.A. 77-416(b)(1)(B).**

The regulations are not mandated by federal law. The regulations do not exceed the requirements of federal law.

3. **A description of the cost, the persons who will bear the costs and those who will be affected by the proposed rules and regulations, including the agency proposing the rules and regulations, other governmental agencies or units, private citizens and consumers of the products or services which are the subject of the rules and regulations or the enforcement thereof. K.S.A. 77-416(b)(1)(C).**

The Department of Administration does not anticipate economic impact on the Department of Administration, other governmental agencies or units, or private citizens and consumers of the products or services which are the subject of the rule and regulation. The Department of Administration, Division of Facilities Management, currently requires compliance ASHRAE and IECC with the design development submittal. These requirements are outlined in Chapter 12, Section 5.0, of the Building Design and Construction Manual 2010, which was issued in January 2010 (BDCM). Proposed K.A.R. 1-67-2 is intended to reflect current requirements for new construction as outlined in Chapter 12, Section 5.1, of the BDCM. Likewise, K.A.R. 1-67-3 is intended to reflect current requirements for renovation, retrofit, or repair as outlined in Chapter 12, Section 5.2, of the BDCM. The BDCM is readily accessible and may be found on the following web site: <http://www.da.ks.gov/fp/manual.htm>.

4. **A description of any less costly or less intrusive methods that were considered by the state agency for achieving the stated purpose of the rules and regulations and why such methods were rejected in favor of the proposed rules and regulations. K.S.A. 77-416(b)(1)(D).**

Considering current business practices within the Department of Administration and the statutory requirements of K.S.A. 2009 Supp. 75-37,129a, no other methods were considered for achieving the stated purpose of the rules and regulations.

Article 68.—Average Fuel Economy Standards for State-Owned Motor Vehicles

1-68-1. Definitions. For purposes of this article, each of the following terms shall have the meaning specified in this regulation:

(a) "Average fuel economy" shall have the meaning assigned to that term in 40 C.F.R. 600.002-85(a)(14), as in effect on July 1, 2007, which is hereby adopted by reference.

(b)(1) "Life-cycle cost-effective," when used to describe a motor vehicle that is being compared to another motor vehicle, shall mean the motor vehicle with a lower life-cycle cost, as determined according to this subsection.

(2) To determine the life-cycle cost of each motor vehicle, the following formula shall be used: (Average annual fuel cost of the motor vehicle x 6.67) + purchase price of the motor vehicle.

The multiplier 6.67 reflects 100,000 miles divided by 15,000 miles per year.

(3) If the motor vehicles being compared have identical life-cycle costs as computed in accordance with this subsection, then these motor vehicles shall be deemed to be equally life-cycle cost-effective.

(c) "Motor vehicle" shall have the meaning assigned to "automobile" in 40 C.F.R. 600.002-85(a)(4), as in effect on July 1, 2007, which is hereby adopted by reference. As used in that federal regulation, "secretary" shall mean the U.S. secretary of transportation or that person's authorized representative.

(d) "State agency" has the meaning specified in K.S.A. 75-3701, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 75-4618; effective P-

_____.)

ATTORNEY GENERAL

AUG 26 2010

APPROVED BY *ga*

DEPT. OF ADMINISTRATION

AUG 26 2010

APPROVED

1-68-2. Purchase of a new motor vehicle during fiscal year 2011. (a) Each state agency that seeks to purchase a new motor vehicle during fiscal year 2011 shall be subject to the provisions of K.S.A. 75-3739 through K.S.A. 75-3740a, K.S.A. 75-37,102, and K.S.A. 75-4618 and amendments thereto.

(b) Each state agency that seeks to purchase a new motor vehicle without complying with subsection (a) shall meet the following requirements before the purchase of the new motor vehicle:

(1) Submit a written motor vehicle purchase request to the department of administration, division of budget, on a form authorized by the division of budget; and

(2) obtain approval to purchase the new motor vehicle from the department of administration, division of budget.

(c) The director of the division of purchases in the department of administration shall obtain the average fuel economy for each motor vehicle on contract and ensure that each motor vehicle purchased as specified in subsection (a) is life-cycle cost-effective. (Authorized by and implementing K.S.A. 2009 Supp. 75-4618; effective P-_____.)

ATTORNEY GENERAL

AUG 20 2010

APPROVED BY 

DEPT. OF ADMINISTRATION

AUG 12 2010

APPROVED

STATE OF KANSAS
DEPARTMENT OF ADMINISTRATION
ECONOMIC IMPACT STATEMENT FOR K.A.R. 1-68-1 TO K.A.R. 1-68-2

Pursuant to K.S.A. 77-416(b), the economic impact statement for K.A.R. 1-68-1 and K.A.R. 1-68-2 immediately follows:

1. A brief description of the proposed rules and regulations and what is intended to be accomplished by their adoption. K.S.A. 77-416(b)(1)(A).

As required by K.S.A. 2009 Supp. 75-4618, K.A.R. 1-68-1 and K.A.R. 1-68-2 constitute a newly proposed set of regulations. This set of regulations is intended to ensure that the average fuel economy for state-owned motor vehicles purchased in fiscal year 2011 is at least 10% higher than the average fuel economy for state-owned motor vehicles purchased in fiscal year 2008. The Department of Administration, Division of Purchases, oversees the purchase of motor vehicles through a statewide motor vehicle contract. The purchase of motor vehicles with a higher average fuel economy, however, hinges on whether the vehicle is identified as life-cycle cost-effective.

In K.A.R. 1-68-1(b), the Department of Administration has provided the following mathematical formula to determine the life-cycle cost of each motor vehicle: (Average annual fuel cost of the motor vehicle x 6.67) + purchase price of the motor vehicle. The multiplier 6.67 reflects 100,000 miles divided by 15,000 miles per year. This multiplier takes into account both the average total number of miles a motor vehicle is driven and the average number of miles per year the motor vehicle is driven. In other words, state-owned vehicles average a life-span of 6.67 years before the cost to maintain the motor vehicle starts to exceed the fair market value of the motor vehicle.

The Department of Administration also turned to the Code of Federal Regulations to more adequately define "average fuel economy" and "motor vehicle." The reason for this

decision is quite evident when the definitions in K.S.A. 75-4601 are reviewed. Notably, K.S.A. 75-4601 has never been amended since this statute became effective in 1972, well before the gas crunch of President Jimmy Carter's administration and the onset of shrinking SUVs in the wake of the 2007 recession. Under K.S.A. 75-4601, there is no definition for "average fuel economy." Moreover, a "motor vehicle" relates only to a "passenger motor vehicle" or "truck" having a gross vehicle weight of not more than 12,000 pounds. While it may go without saying, it is clear that the construction of motor vehicles and identification of countless new technologies and standards, including fuel consumption and gross vehicle weight standards, within the car industry have changed dramatically since 1972. Thus, reliance on the federal standards promulgated by the United States Environmental Protection Agency is necessary.

Finally, the regulations also allow a state agency to seek permission to purchase a motor vehicle not under the statewide contract and out of compliance with the average fuel economy limitations. For example, a state law enforcement office may need a turbocharged motor vehicle specifically designed for high-speed pursuits, which obviates the capability to comply with these regulations. Therefore, an exception for these scenarios is paramount.

2. **Whether the proposed rules and regulations are mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and whether the proposed rules and regulations exceed the requirements of applicable federal law. K.S.A. 77-416(b)(1)(B).**

The regulations are not mandated by federal law. The regulations do not exceed the requirements of federal law.

3. **A description of the cost, the persons who will bear the costs and those who will be affected by the proposed rules and regulations, including the agency proposing the rules and regulations, other governmental agencies or units, private citizens and consumers of the products or services which are the subject of the rules and regulations or the enforcement thereof. K.S.A. 77-416(b)(1)(C).**

The Department of Administration anticipates a positive economic impact on the Department of Administration, other governmental agencies or units, or private citizens and consumers of the products or services which are the subject of the rule and regulation. The practice of purchasing motor vehicles with increasing average fuel economy standards through the Department of Administration, Division of Purchases, has been ongoing since the issuance of Executive Directive No. 07-373 (Energy Conservation and Management).

Paragraph 4 of the Executive Directive required the Department of Administration to "take necessary measures to assure that the average EPA mileage rating for automobiles purchased in 2010 is at least 10% higher than the 2007 average." The authorizing and implementing statute for these regulations is similar to paragraph 4 of Executive Directive No. 07-373. In fact, the thrust of K.S.A. 2009 Supp. 75-4618 can be traced back to the Executive Directive.

As a result of the Executive Directive, the Department of Administration was able to achieve an average increase of 11.82% miles per gallon from fiscal year 2007 to fiscal year 2010 for the entire state fleet of vehicles. Assuming the average cost of gas during this time period was \$2.50 per gallon, the Department of Administration was able to realize an average savings of \$0.2955 cents per gallon from fiscal year 2007 to fiscal year 2010. To that end, the Department of Administration is simply continuing its ongoing business practices regarding the purchase of motor vehicles and intends to maintain the trend in cost savings for fiscal year 2011 pursuant to K.S.A. 2009 Supp. 75-4618.

4. A description of any less costly or less intrusive methods that were considered by the state agency for achieving the stated purpose of the rules and regulations and why such methods were rejected in favor of the proposed rules and regulations. K.S.A. 77-416(b)(1)(D).

In light of current business practices within the Department of Administration, Executive Directive No. 07-373, and the statutory requirements of K.S.A. 2009 Supp. 75-4618, no other methods were considered for achieving the stated purpose of the rules and regulations.